

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 21, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JENNIFER TYLER, an individual,

Plaintiff,

-vs-

CHELAN COUNTY, by and through its
agency; and CHELAN COUNTY
SHERIFF'S OFFICE, a Washington
Municipal Corporation,

Defendant.

No. 2:19-CV-00172-MKD

**REPORT AND
RECOMMENDATION**

BEFORE THE COURT is Defendant's Motion to Enforce Settlement Agreement. ECF No. 38. The Court held a hearing on the motion on November 17, 2023. Attorney Mary Schultz appeared on behalf of the Plaintiff; Attorney Jeffrey James represented the Defendants. Defendants Chelan County and Chelan County Sheriff's Office ("Defendants") ask the Court to recognize and enforce a settlement agreement between Plaintiff Jennifer Tyler ("Plaintiff"), Defendant Chelan County, and the Chelan County Deputy Sheriffs Association¹ ("Association") arising out of employment grievances addressed by the Association on behalf of Plaintiff and resolved by a written settlement agreement concluded in March 2021 (the "Settlement Agreement"). Defendants contend that

¹ As set forth herein, the Association represented Plaintiff's interests as required by a collective bargaining agreement. The Association is not a party in this case.

1 the settlement agreement precludes Defendant from seeking lost wages in this case.
2 Defendants further request that the Court assess attorney fees for the cost of
3 bringing the motion.

4 I. BACKGROUND

5 In her Complaint filed May 17, 2019, Plaintiff seeks damages arising from
6 alleged employment discrimination, harassment, and retaliation. ECF No. 1.
7 When the Complaint was filed, Plaintiff was represented by Michael J. Kelly and
8 Joseph O. Baker of Gehrke, Baker, Doull & Kelly. *Id.* After the Complaint was
9 filed, Defendant Chelan County Sheriff's Office, Plaintiff's then employer,
10 terminated Plaintiff's employment as a deputy sheriff in 2019, approximately
11 seven months after the instant lawsuit was filed. ECF Nos. 40-1, 42.

12 Following Plaintiff's termination, the parties sought to stay this case to allow
13 Plaintiff to complete a grievance procedure regarding Plaintiff's termination, as
14 provided for in the collective bargaining agreement ("CBA") between the
15 Association and Chelan County. ECF No. 9. Pursuant to the CBA, the
16 Association advocated for Plaintiff's interests during the grievance procedure. The
17 stay was for the purpose of allowing Plaintiff to include a wrongful termination
18 claim in the instant lawsuit following the Association's resolution of the
19 termination grievance. ECF No. 9. The District Court entered a stay on February
20 7, 2020. ECF No. 10.

21 A little more than a year later, the parties reported the stay could be lifted
22 because the grievance process had concluded in the form of the Settlement
23 Agreement between Plaintiff, the Association, and Defendant Chelan County.
24 ECF No. 14. The District Court lifted the stay on April 6, 2021, and then granted
25 the parties' stipulated motion to continue the trial until May 2023. ECF No. 23.
26 Plaintiff did not amend her Complaint to include a wrongful termination claim.
27 *See* docket generally.
28

1 On March 21, 2023, Plaintiff's original attorneys, Mr. Kelly and Mr. Baker,
2 withdrew because Plaintiff retained her current attorney, Ms. Schultz. ECF
3 Nos. 24, 25. Ms. Schultz entered a notice of appearance on March 23, 2023. ECF
4 No. 25. Due to the imminent trial date, Ms. Schultz sought another continuance
5 and the District Court continued the trial to May 20, 2024. ECF No. 33. Plaintiff
6 then brought the instant motion on September 6, 2023. ECF No. 38.

7 II. FACTS

8 Defendant Chelan County Sheriff's Office employed Plaintiff as a deputy
9 sheriff beginning in 2006. ECF No. 1 at 4. Prior to the events underlying the
10 current lawsuit, the Sheriff's Office terminated Plaintiff on November 1, 2010. *Id.*
11 An arbitrator reinstated Plaintiff in 2013. *Id.* Plaintiff brought an employment
12 discrimination claim related to her treatment prior to the 2010 termination and for
13 issues surrounding her termination in Chelan County Superior Court against
14 Chelan County. *Id.* Plaintiff prevailed in the lawsuit in 2018 with a jury award of
15 \$500,000.00 in emotional distress damages and \$6,500.00 in economic damages.
16 *Id.* The lawsuit caused friction between Plaintiff and her fellow deputies.

17 Tensions remained high between Plaintiff and her fellow deputies following
18 her favorable Chelan County Superior Court verdict in 2018. ECF No. 42.
19 Plaintiff alleges in the current lawsuit that following the favorable resolution
20 concerning her first termination and reinstatement, several deputies actively
21 undermined her employment in retaliation for her prior lawsuit and union
22 activities. ECF No. 1. The Complaint includes several alleged examples. *See*
23 ECF No. 1. In the months prior to filing the lawsuit, a fellow deputy lodged a
24 formal complaint against her. *Id.*

25 On May 17, 2019, Plaintiff filed the instant suit against Defendants Chelan
26 County and Chelan County Sheriff's Office alleging a hostile work environment,
27 sex discrimination, retaliation for protected activities, and hostile work
28

1 environment under both Federal and state law as well as negligence. *Id.* Plaintiff
2 continued to experience difficulties with her fellow deputies after bringing the
3 instant lawsuit and the complaint filed against her by a fellow deputy remained
4 pending. *Id.* and also see ECF No. 42.

5 On June 13, 2019, after the instant lawsuit was filed, Defendant Chelan
6 County Sheriff's Office imposed a three-day suspension on Plaintiff as a result of
7 the fellow deputy's complaint. *Id.* The Association then stepped in and grieved
8 the suspension as retaliatory. *See* ECF No. 42-1. The Association sought relief on
9 Plaintiff's behalf to make whole the three-day loss of work, including pay and
10 interest on lost wages. *Id.*

11 In an opinion issued on February 11, 2021, a Public Employment Relations
12 Examiner ruled in favor of Plaintiff awarding: "any wages and benefits in the
13 amounts Tyler would have earned or received during the suspension." ECF
14 No. 42-2 at 17. The Chelan County Board of Commissioners affirmed the
15 Examiner's decision. ECF No. 42-3.

16 During the grievance process addressing the suspension, and approximately
17 seven months after filing the instant lawsuit, Defendant Chelan County Sheriff's
18 Office terminated Plaintiff a second time. *See* ECF No. 40. The Association again
19 acted on Plaintiff's behalf and notified the elected Sheriff by letter dated
20 September 4, 2019, of its intent to grieve the decision to terminate Plaintiff and
21 alleged that Plaintiff's termination violated the CBA and lacked just cause. ECF
22 No. 44-4.² On February 4, 2020, the parties filed a Stipulated Motion and Order to
23 Stay regarding this case, stating:
24

25
26 ² The CBA clearly applies to employees that the Association believes were
27 terminated in violation of the CBA. ECF No. 47-1, Exhibit A, Agreement
28 Between the Chelan County Deputy Sheriff's Association and Chelan County

1 Plaintiff intends to include wrongful termination in this
2 litigation. However, at present, Plaintiff and her counsel
3 believe it necessary to stay this matter until the grievance
4 procedure is complete. In particular, Plaintiff wishes to
5 devote her time and energy to assisting her Guild counsel
6 in the grievance proceedings, rather than prosecute two
7 separate actions concurrently. Further, this litigation may
8 be affected by any potential arbitration proceedings in its
9 facts and/or damages.

10 ECF No. 9 at 2. The District Court then stayed the case on February 7, 2020. ECF
11 No. 10.

12 On August 10, 2020, Plaintiff filed a Status Report and indicated the
13 following to the District Court:

14 Chelan County and the Chelan County Sheriff's Officers'
15 Guild have not yet completed arbitration in this matter.
16 With regard to the arbitration, both parties are represented
17 by other counsel, not involved in this case, and the exact
18 status of the arbitration in that matter is not currently
19 known. In the interim, Counsel for the parties on this case
20 have discussed the possibility of a mediation in attempt to
21 come to a "global" resolution of both the Guild arbitration
22 matter and the instant case.

23 ECF No. 11 at 2. A subsequent Status Report filed on October 1, 2020, contained
24 nearly identical language, updating the status only to include that the parties were
25 choosing an arbitrator and dates for the arbitration. ECF No. 13 at 2.

26 Finally, on April 5, 2021, the parties reported that the "Chelan County and
27 the Chelan County Sheriff's Officers' Guild have come to a final resolution in the
28 Guild/County arbitration related to the Collective Bargaining Agreement issues
tied to this matter." ECF No. 14 at 1-2. To date, Plaintiff has not filed an amended
Complaint to include any claims pertaining to Plaintiff's most recent termination.

Regarding Commissioned Deputies, ¶ 2.1.

1 On October 23, 2023, Plaintiff filed a motion for extension of time to amend
2 Plaintiff's complaint, ECF No. 52, which the District Court granted.

3 As reflected in the parties' status reports, the Association grieved Plaintiff's
4 termination claim and ultimately arrived at an agreed settlement, as memorialized
5 in the Settlement Agreement, that included five years of wages and benefits for
6 Plaintiff to be paid through payroll on a schedule as if she were employed
7 amounting to \$455,000.00. ECF No. 42-9. Plaintiff received back pay
8 from the time of her termination until the time of the agreement. ECF No. 40-1.
9 Defendants agreed to pay uninsured medical and dental expenses incurred from the
10 date of termination until the date of execution of the Settlement Agreement. *Id.*
11 The Settlement Agreement includes a "Mutual Release" paragraph, wherein
12 Plaintiff "fully and forever releases and discharges the County. . .from all liability
13 for any and all wage claims relating to her employment with Chelan County."
14 ECF No. 40-1 at 4, ¶ 11. The signature pages on the agreement are unusual as
15 each signature is on a separate sheet and Plaintiff and Michael Morrison (the
16 Association President) signed pages watermarked, "DRAFT." *Id.* at 7.
17 Nonetheless, in a follow-up email, Association attorney Cynthia McNabb asked
18 opposing counsel to "please accept this email as assurance that they meant to sign
19 the final." *Id.* at 8. Moreover, since execution of the agreement on March 8, 2021,
20 Plaintiff has plainly acted as though Settlement Agreement is final and has readily
21 accepted salary and other benefits paid by Defendants pursuant to the Settlement
22 Agreement. ECF No. 40 at 4.

24 III. ANALYSIS

25 The Court has considered the motion, briefing, and the arguments of the
26 parties. The Court is fully informed. For the reasons set forth below, the Court
27 recommends that the District Court grant Defendant's Motion to Enforce
28 Settlement Agreement. ECF No. 38. The Settlement Agreement resolved

1 economic damages arising from Plaintiff's 2019 termination from the Chelan
 2 County Sheriff's Office. All of the terms, both those favorable to Plaintiff
 3 including the payment of five years of wages and other economic damages, as well
 4 as the waiver of future wage claims, to which Plaintiff now objects, are enforceable
 5 as to Plaintiff.

6 **A. The Settlement Agreement is Presumptively Enforceable.**

7 Employees subject to a collective bargaining agreement are bound by a
 8 settlement agreement negotiated between a union and an employer through an
 9 established grievance procedure consistent with the collective bargaining
 10 agreement. *Ervin v. Columbia Distrib., Inc.*, 84 Wash. App. 882, 887 (1997).³
 11 "Unions are free to negotiate and accept settlements even without the grievants'
 12 approval." *Shane v. Greyhound Lines, Inc.*, 868 F.2d 1057, 1061 (9th Cir. 1989).
 13 "Washington courts interpret settlement agreements in the same way they interpret
 14 other contracts." *McGuire v. Bates*, 169 Wn.2d 185, 188 (2010). "The touchstone
 15 of contract interpretation is the parties' intent." *Tanner Elec. Coop v. Puget Sound*
 16 *Power & Light*, 128 Wn.2d 656, 674 (1996). However, the "subjective intent of
 17

18
 19
 20 ³ "In general, where a collective bargaining agreement establishes grievance and
 21 arbitration procedures for the redress of employee grievances, an employee must
 22 exhaust those procedures before resorting to judicial remedies." *Lew v. Seattle*
 23 *Sch. Dist. No. 1*, 47 Wash. App. 575, 577 (1987). The Court recognizes, however,
 24 that "[d]iscrimination claims in Washington are based on statute (chapter 49.60
 25 RCW). It permits individual employees to vindicate their civil rights in court
 26 without first exhausting remedies provided by a collective bargaining agreement."
 27 *Yakima Cnty. v. Yakima Cnty. L. Enft Officers Guild*, 157 Wash. App. 304, 328
 28 (2010).

1 the parties is generally irrelevant if the intent can be determined from the actual
2 words used.” *Brogan & Anensen, LLC v. Lamphiear*, 165 Wn.2d 773, 776 (2009).

3 Here, the Association and Defendant Chelan County agreed to a Settlement
4 Agreement pursuant to the grievance procedures described in the CBA that binds
5 Plaintiff. ECF No. 40-1. First, while employed at the Chelan County Sheriff's
6 Office, the CBA bound Plaintiff. ECF No. 47-1, ¶ 1-1. Second, the CBA gave the
7 Association the exclusive right to grieve violations, including discharge without
8 good cause allegations. ECF No. 47-1. Third, the Association exercised the right
9 to grieve claims on behalf of Plaintiff, both when Plaintiff was placed on a three-
10 day suspension, then later when she was terminated. ECF No. 42, 47-2, 47-3,
11 47-4, 47-5, and 47-6.

12 The Settlement Agreement ultimately negotiated by the Association resolved
13 Plaintiff's wrongful termination grievance favorably for Plaintiff by awarding her
14 five years of wages totaling \$455,000 and benefits. ECF No. 40-1 at 3. Plaintiff
15 also received back pay from the time of termination, as well as reimbursement of
16 uninsured medical and dental expenses. *Id.* In exchange for this favorable result,
17 the Settlement Agreement specifically released Chelan County Sheriff's Office
18 from “any and all wage claims relating to [Plaintiff's] employment with Chelan
19 County.” *Id.* at 4, ¶ 11. Accordingly, the Court concludes Plaintiff is
20 presumptively bound by the terms of the Settlement Agreement negotiated
21 between the Association and Defendant Chelan County.
22

23 **B. The Terms of the Settlement Agreement Bind Plaintiff Absent a**
24 **Showing that the Association Breached its Duty of Fair Representation.**

25 In order escape the enforceability of the Settlement Agreement, Plaintiff
26 must demonstrate the Association somehow breached its duty of fair representation
27 to Plaintiff. “Courts have imposed a duty of fair representation on unions because
28 of their status as the exclusive bargaining agent for their members.” *Womble v.*

1 *Loc. Union 73 of Int'l Bhd. of Elec. Workers, AFL-CIO*, 64 Wash. App. 698, 701
 2 (1992) (citing *Vaca*, 386 U.S. at 177). For a union to breach its duty of fair
 3 representation, its conduct in handling the grievance must be “arbitrary,
 4 discriminatory, or in bad faith.” *Vaca*, 386 U.S. at 190. “[M]ere negligent conduct
 5 by a union does not constitute a breach of the union's duty of fair representation.”
 6 *Scott v. Machinists Auto. Trades Dist. Lodge No. 190 of N. California*, 827 F.2d
 7 589, 593 (9th Cir. 1987). To demonstrate that a union has breached the duty of fair
 8 representation, “the employee must prove: (1) the employer's action violated the
 9 terms of the collective bargaining agreement and (2) the union breached its duty of
 10 fair representation.” *Womble*, 64 Wash. App. at 703.

11 Accordingly, absent proof that the Association breached its duty of fair
 12 representation, Plaintiff must abide by the terms of the Settlement Agreement
 13 because: (1) the CBA applied to Plaintiff; (2) the Association had exclusive right to
 14 address discharge without good cause under the CBA; and (3) the Association
 15 grieved Plaintiff's alleged wrongful discharge which resulted in the Settlement
 16 Agreement.

17 **C. Plaintiff's Contentions Against the Enforceability of the Settlement**
 18 **Agreement Fail.**

19 **1. *Plaintiff Does Not Dispute that the Association and Plaintiff***
 20 ***Executed a Settlement Agreement with Defendant Chelan County***
 21 ***and Plaintiff has Received Ongoing Benefits as a Result.***

22 Plaintiff does not, and cannot reasonably, dispute that the Association and
 23 Defendant Chelan County Sheriff's Office reached a Settlement Agreement.
 24 Plaintiff also does not dispute that Plaintiff has received substantial ongoing
 25 benefits as a direct result of the Settlement Agreement. Rather, Plaintiff now
 26 contends that she should not be bound by the waiver of wage claims in the
 27 Settlement Agreement while Plaintiff continues to benefit from the result of the
 28

1 Settlement Agreement in the form of continued salary payments and other benefits
2 derived as a result of the Settlement Agreement. Plaintiff's position is untenable.

3 In support of her position, Plaintiff appears to argue: (1) the Association did
4 not grieve the wrongful termination issue; (2) the Association lacked the right or
5 authority to negotiate a settlement of the wrongful termination issue; (3) Plaintiff's
6 rights cannot be waived without her knowing consent and she did not knowingly
7 consent to the waiver of future claims; (4) Plaintiff is not a party to the Settlement
8 Agreement and therefore need not comply with the terms; (5) or, in the alternative,
9 if she is a party, she was intentionally led to believe by the Association and
10 Defendant Chelan County Sheriff's Office that the Settlement Agreement did not
11 limit future wage claims as of yet unpled wrongful discrimination claims, meaning
12 thereby that the Association and Defendant Chelan County Sheriff's Office
13 willfully misrepresented the effect of the Settlement Agreement on the instant
14 lawsuit; (6) the Association and Defendant Chelan County Sheriff's Office
15 colluded to mislead her and purposefully excluded her counsel in the instant case;
16 and (7) Defendant Chelan County Sheriff's Office improperly used the Association
17 to terminate Plaintiff's federal claims and damages. ECF No. 41. Plaintiff's
18 contentions are addressed in turn:

19
20 **2. *The Association Grieved Plaintiff's Wrongful Termination Claim***
21 ***Consistent with the Association's Authority.***

22 The facts of this case do not support Plaintiff's contentions regarding
23 whether the Association grieved her wrongful termination claim and the
24 Association's authority to do so. First, Plaintiff's assertion that the Association
25 failed to grieve Plaintiff's termination is flatly inaccurate. As illustrated by the
26 letter submitted to the Chelan County Sheriff's Office, (ECF No. 44-4) and
27 reflected in representations to the District Court in the instant case, (*see* ECF Nos.
28 9, 11, and 14), the Association grieved Plaintiff's termination and negotiated a

1 favorable result. The Court finds no evidence that the Association breached a duty
2 of fair representation by somehow not grieving Plaintiff's termination.

3 Second, there are no facts that suggest the Association lacked authority to
4 grieve Defendant's termination claim. "CBAs generally are not to be read as
5 standard contracts. And the court in *Inlandboatmens Union of Pac. v. Dutra*
6 *Group* explains why: 'The collective bargaining agreement states the rights and
7 duties of the parties. It is more than a contract; it is a generalized code to govern a
8 myriad of cases which the draftsmen cannot wholly anticipate. The collective
9 agreement covers the whole employment relationship.'" *Chelan Cnty. v. Chelan*
10 *Cnty. Deputy Sheriff's Ass'n*, 162 Wash. App. 176, 182–83 (2011).⁴ Accordingly,
11 the plain language of the CBA, coupled with the clear purpose of the grievance
12 procedure set forth in the CBA, are contrary to Plaintiff's contention that the
13 Association lacked authority to grieve her wrongful termination claim. ECF
14 No. 47-1. The CBA protects the rights of employees, including those terminated
15 without good cause. *Id.* The Association retains the right to grieve wrongful
16 termination claims. *Id.*⁵ The Association then grieved Plaintiff's wrongful
17 termination claim. ECF No. 47-2.

19 ⁴ In *Chelan Cnty.*, the Court concluded that the legal enforceability of a
20 memorandum of understanding arising from a mediation addressing a grievance
21 should be referred to arbitration because the memorandum of understanding arose
22 from a grievance procedure outlined in the collective bargaining agreement.
23 *Chelan Cnty.*, 162 Wash. App. at 183. If the Plaintiff seeks clarification of the
24 terms of the Settlement Agreement and applicability to Plaintiff, pursuant to this
25 decision, arbitration may be the appropriate (and only) vehicle for addressing such
26 a dispute.

27 ⁵ Though the Association's role in wrongful termination is not explicitly set out,
28

1 Ultimately, the Settlement Agreement was the end result of the grievance
2 process initiated by the Association on Plaintiff's behalf. ECF No. 47-2. Indeed,
3 the Association negotiated very favorable terms for Plaintiff including back pay
4 from the time of termination, reimbursement of uninsured dental and medical
5 expenses incurred following the wrongful termination until the time of the
6 Settlement Agreement, and five years of wages to be paid without an obligation for
7 Plaintiff to perform any work. ECF No. 40-1 at 2-3. Plaintiff, through the
8 Association's counsel, advocated for terms and asked questions she had about the
9 agreement prior to signing it. *See* ECF Nos. 42-7, 42-8, 42-10, 47-10, and 47-11.

10 There is similarly no merit to Plaintiff's contention that she is not a party to
11 the Settlement Agreement or did not knowingly consent to the Settlement
12 Agreement. As set forth above, Plaintiff is functionally a party by virtue of the
13 Association's obligation to represent her interests pursuant to the CBA. Plaintiff's
14 active involvement in the process that culminated in the Settlement Agreement and
15 her signature on upon review of the Settlement Agreement amply illustrate her
16 knowing consent to all terms of the agreement, including waiver of future wage
17 claims. Ultimately, whether or not Plaintiff is a formal party to the Settlement
18 Agreement, the terms of the Settlement Agreement, including the waiver, apply to
19 Plaintiff because the Association grieved her alleged wrongful termination on her
20

21 the CBA recognizes the Association as the "sole bargaining agent for wages, hours
22 and working conditions for all full time and regular part-time fully commissioned
23 deputies." ECF No. 47-1, at ¶ 1.1. Management retains the right to "discharge
24 employees for just cause." *Id.* at ¶ 2.1. "A grievance is defined as a dispute
25 involving the interpretation, application or alleged violation of any provision of
26 this Agreement." *Id.* at ¶ 9.1. Discharge without good cause violates a provision
27 of the CBA, so meets the definition of a grievance.
28

1 behalf arriving at a mutually agreeable settlement which was executed by the
2 Association, Plaintiff, and the County.⁶ Accordingly, on the facts of this case,
3 Plaintiff is bound to the terms of the Settlement Agreement. *See* ECF No. 47-1.

4 **3. *Plaintiff Offers No Evidence of Collusion or Bad Faith by the***
5 ***Association in the Resolution of Plaintiff's Wrongful Termination***
6 ***Claim Pursuant to the CBA.***

7 Again, Plaintiff must demonstrate the Association breached its duty of fair
8 representation to be relieved from the terms of the Settlement Agreement. *Shane*,
9 868 F.2d at 1060. Plaintiff, however, fails to provide evidence of any breach by
10 the Association of its duty to fairly represent Plaintiff by misrepresentations on the
11 part of the Association or by collusion with the Defendants by the Association.
12 Plaintiff similarly offers no evidence of the Association's bad faith. Rather,
13 Plaintiff offers only her own self-serving assertions and in support of her
14 contention the Association somehow acted in bad faith.⁷

15
16 ⁶ The Court recognizes that Plaintiff may pursue state statutory state claims
17 independent from grieving violations of the CBA. *Reese v. Sears, Roebuck & Co.*,
18 107 Wash.2d 563, 578 (1978). ("We therefore conclude that employees may
19 choose to vindicate their civil rights by immediately filing a civil action under
20 RCW 49.60 or they may wait, pursue a remedy under their collective bargaining
21 agreement, and *if their civil rights remain unenforced*, filed a civil discrimination
22 action pursuant to RCW 49.60." (emphasis added))

23
24 ⁷ Plaintiff suggested that an evidentiary hearing would be appropriate to introduce
25 extrinsic evidence surrounding the terms of the contract in an effort to understand
26 the waiver portion of the agreement. The Court declines Plaintiff's suggestion. As
27 mentioned in Footnote 4, arbitration may be the only vehicle for a dispute about
28 the terms of the Settlement Agreement. Further, "[a]dmissible extrinsic evidence

1 Court records plainly demonstrate that Plaintiff's original counsel in this
2 case contemplated filing wrongful termination claims, but Plaintiff's counsel also
3 stated he intended to see the Association's grievance procedure to its conclusion
4 prior to incorporating any wrongful termination claim, because "this litigation may
5 be affected by any potential arbitration proceedings in its facts and/or damages."
6 ECF No. 9. Moreover, the status reports to the District Court illustrate that
7 Plaintiff's counsel in this suit was well aware of the grievance procedures and
8 intentionally chose not to pursue wrongful termination claims in the instant lawsuit
9 while the grievance procedure proceeded between the Association and Defendant
10 Chelan County Sheriff's Office on behalf of Plaintiff. *See* ECF Nos. 11, 13, 14.

11 The record further demonstrates that counsel for the Association maintained
12 contact with Plaintiff, sought Plaintiff's feedback, and negotiated the Settlement
13 Agreement with Plaintiff's concerns and rights in mind, despite no legal
14 requirement to do so. ECF No. 47-7, 47-10, and 47-11. The Association then
15 provided the Settlement Agreement to Plaintiff which she signed.⁸ Accordingly,
16

17 does not include: (1) evidence of a party's unilateral or subjective intent as to the
18 meaning of a contract word or term; (2) evidence that would show an intention
19 independent of the contract; or (3) evidence that varies, contradicts or modifies the
20 written language of the contract." *Bort v. Parker*, 110 Wash. App. 561, 574 (2002)
21 (internal citation omitted). Accordingly, the Court need not consider Plaintiff's
22 unilateral and self-serving interpretation of the Settlement Agreement.
23

24 ⁸ The Court recognizes that Plaintiff signed a page marked "DRAFT." However,
25 the Court puts little weight on this concern for a few reasons. First, Plaintiff was
26 not required to sign off on the Settlement Agreement between the Association and
27 the former employer as the Association has full authority to act on her behalf
28 throughout the grievance procedure, including entering into a settlement

1 Plaintiff cannot plausibly contend that the Association failed to inform her about
2 the grievance procedure or the settlement negotiations. All of this strongly
3 demonstrates that the Association was discharging its obligations under the CBA
4 diligently.

5 Lastly, Plaintiff suggests the Defendant's "may have colluded" but provides
6 no basis for this assertion. ECF No. 41, p. 20. If Plaintiff believes that the
7 Association breached its duty by improperly colluding with Defendant Chelan
8 County Sheriff's Office, redress must be sought against the Association. *Vaca*,
9 386 U.S. at 186. The Court can divine no evidence of improper collusion on this
10 record.

11 IV. CONCLUSION

12 Based on the foregoing, for the reasons stated in this Report and
13 Recommendation, Plaintiff is bound by all parts of the Settlement Agreement and
14 the terms should be enforced regardless of whether the terms impact potential
15 damages in the instant lawsuit. In sum, the CBA required that wrongfully
16 terminated employees grieve their complaints through the Association. ECF
17 No. 47-1. The Association then grieved Plaintiff's suspension and wrongful
18 termination, resulting in the Settlement Agreement. ECF No. 40-1. Though not
19 legally required, the Association then sought Plaintiff's feedback and incorporated
20 her concerns into the final version of the Settlement Agreement. ECF Nos. 47-7,
21 47-10, and 47-11. Plaintiff then signed the agreement after discussing the legal
22 _____
23 agreement. *Shane v. Greyhound Lines, Inc.*, 868 F.2d 1057, 1061 (9th Cir. 1989).
24 Second, emails and texts sent contemporaneously demonstrate that Plaintiff
25 knowingly signed the document intending it to be final as represented by the
26 Association's counsel. ECF No. 40-1. Third, Plaintiff has willingly accepted the
27 fruits of the Settlement Agreement since its execution in 2021.
28

1 ramifications with the Association's attorney. ECF Nos. 40-1, 47-10, and 47-11.
2 Plaintiff has thereafter accepted considerable financial and other benefits from the
3 Settlement Agreement.

4 Accordingly, the Settlement Agreement represents the end of a grievance
5 procedure engaged in on Plaintiff's behalf between the Association and Defendant
6 Chelan County Sheriff's Office. Like the rest of the Settlement Agreement, the
7 waiver regarding future wage claims applies to Plaintiff and as a result, damages in
8 this lawsuit are impacted and limited by the waiver. Therefore, Plaintiff may not
9 seek or collect any wage claims arising from her employment with the Chelan
10 County Sheriff's Office in this litigation. Ultimately, Plaintiff seeks to have her
11 cake and eat it too. Plaintiff asks that on one hand, the Court declare the parts of
12 the Settlement Agreement that restrict her collection of certain future damages
13 void, but on the other hand that the Court still require Defendant Chelan County
14 Sheriff's Office to provide Plaintiff financial and other benefits under the same
15 Settlement Agreement. Plaintiff's position is untenable on the record before the
16 Court.

17 **V. RECOMMENDATION**

18 For the reasons stated above, the Court recommends that the District Court
19 grant Defendant's Motion to Enforce Settlement Agreement. ECF No. 38.
20 Though the Court finds little legal basis for Plaintiff's objection to enforcement of
21 the Settlement Agreement, due to the fact that this is Defendant's Motion, and
22 Plaintiff had not yet sought wage claims, the Court finds that Plaintiff's response
23 was in good faith and recommends that no attorney fees or costs need be assessed.

24 **VI. OBJECTIONS**

25 Any party may object to a magistrate judge's proposed findings,
26 recommendations or report within fourteen (14) days following service with a copy
27 thereof. Such party shall file written objections with the Clerk of the Court and
28

1 serve objections on all parties, specifically identifying the portions to which
2 objection is being made, and the basis therefor. Any response to the objection
3 shall be filed within fourteen (14) days after receipt of the objection. Attention is
4 directed to Fed. R. Civ. P. 6(d), which adds additional time after certain kinds of
5 service.

6 A district judge will make a *de novo* determination of those portions to
7 which objection is made and may accept, reject, or modify the magistrate judge's
8 determination. The judge need not conduct a new hearing or hear arguments and
9 may consider the magistrate judge's record and make an independent
10 determination thereon. The judge may, but is not required to, accept or consider
11 additional evidence, or may recommit the matter to the magistrate judge with
12 instructions. *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000); 28 U.S.C.
13 § 636(b)(1)(B) and (C), Fed. R. Civ. P. 72; LMJR 2, Local Rules for the Eastern
14 District of Washington.

15 A magistrate judge's recommendation cannot be appealed to a court of
16 appeals; only the district judge's order or judgment can be appealed.

17 The District Court Executive is directed to file this Report and
18 Recommendation and provide copies to counsel.
19

20 DATED February 21, 2024.




JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE